S.B.Civil Second Appeal No.142/2005

Dhanna Lal vs. Bheru Lal.

Date : 22.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Manish Shishodia, for the appellant.
Mr. JK Bhaiya, for the respondent.

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Heard learned counsel for the parties.

The brief facts of the case are that the plaintiff/ respondent filed a suit for specific performance of contract alleging that the defendant/ appellant agreed to sale the agriculture land for a consideration of Rs.20,000/- and for that purpose, the agreement was executed on 20.5.1989. The plaintiff submitted that the possession of the agriculture land was delivered to him by the defendant on the same day and he paid the entire consideration to the defendant. The plaintiff further pleaded that he was ready and willing to purchase the property in question but the defendant failed to execute the sale deed in favour of the plaintiff despite giving assurances. The defendant/appellant submitted written statement and took a plea that in fact, the consideration of sale was Rs.50,000/- and not Rs.20,000/- but to avoid stamp duty, the consideration has been shown as Rs.20,000/-.

It is also submitted that the plaintiff pleaded just contrary to the agreement that the possession was delivered

to the plaintiff on the day when the agreement was executed. The two courts below rejected the defendant's plea that the consideration was Rs.50,000/- and possession was not delivered to the plaintiff on the date when the agreement was executed.

According to learned counsel for the appellant, the findings recorded by two courts below are contrary in as much as on the basis of oral evidence only, the two courts below held that the possession of the land in question was delivered to the plaintiff on the date of execution of the agreement whereas two courts below rejected the appellant's oral evidence about the actual sale consideration.

I have considered the submissions of learned counsel for the appellant.

It is clear that the appellant want to contradict documentary evidence by oral evidence by saying that in fact, the sale consideration was Rs.50,000/- and not Rs.20,000/- as mentioned in the agreement. Two courts below after appreciation of the oral as well as documentary evidence held that the defendant failed to prove that the sale consideration was Rs.20,000/-. I do not find that the courts below have committed any error of fact or law in doing so.

So far as accepting the plea of the plaintiff that the possession in fact was delivered to the plaintiff on the

day when the defendant agreed to sale the land in question to the plaintiff is concerned, the absence of mentioning of delivery of possession of the property in question to the plaintiff could have been one of the circumstance to draw an inference that the possession might not have been given to the prospective purchaser but at the same time, there is no mention in the agreement that the possession has been kept by the defendant while entering into agreement or at the time of agreement. Therefore, there is an omission to write a fact in the document with respect to the fact of delivery or non-delivery of possession and that fact could have been proved by the parties by oral evidence. Two courts below, since found on the basis of evidence of the plaintiff that in fact the possession of the property was delivered to the plaintiff by the defendant at the time of agreement, I do not find that the finding can be interfered by this Court in second appeal and there appears to be no reason for interference looking to the facts of the case and admission of the defendant that the plaintiff is in possession of the property in dispute.

In view of the above, I do not find any merit in this appeal. No substantial question is involved in this appeal.

Accordingly, this second appeal is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya